IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 15725 of 2003

with

SPECIAL CIVIL APPLICATION No 15727 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE K.S.JHAVERI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

CHHOTABHAI KASHIBHAI BIN KHODABHAI THAKORE

Versus

SHANKERBHAI RANCHHODBHAI PARMAR

Appearance:

1. Special Civil Application No. 15725 of 2003
   MR UM SHASTRI for Petitioner No. 1-7
   MR YV BRAHMBHATT for Respondent No. 1-5
2. Special Civil Application No. 15727 of 2003
   MR UM SHASTRI for Petitioner No. 1
   NOTICE SERVED for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE K.S.JHAVERI

Date of decision: 20/10/2004

ORAL JUDGEMENT

1. RULE. Mr. Brahmbhatt waives service of rule on behalf of the respondents. With the consent of the parties the matters are taken up for final hearing today.

2. The petitioners have by way of this petition challenged the order dated 8th November, 2001 below Exh.5 in Civil Suit No. 174 of 2001, whereby the Trial Court has rejected application below Exh.5, and the said order was also confirmed by the Appellate Court in Civil Appeal No. 33 of 2002 vide order dated 8th August, 2003.

3. I have heard the learned counsel for the respective parties and have perused the relevant documents. However, while considering the matter for interim relief, the Trial Court has not considered the partnership document, for the year 1963, only on the ground that it was produced at a later stage. Further, while deciding the issue, the Trial Court in para 16.9 has observed that though the document was of the year, 1968 the same was not produced earlier and, therefore, the same cannot be considered by the Trial Court. Therefore, in my opinion, the Trial Court while deciding the prima facie case ought to have considered the partnership document which has been executed between the parties. Therefore, I am of the opinion that the Trial Court ought to have taken into consideration the main document as aforesaid. Therefore, the impugned order is required to be quashed and set aside and the matters are required to be remanded to the Appellate Court for fresh decision.

4. In the premises aforesaid, on the facts and circumstances of the case, the impugned order passed by the Appellate Court at Annexure-B to the petition is quashed and set aside. The matters are remanded to the Appellate Court for deciding the matters afresh.

5. Accordingly, the Appellate Court shall consider the matters afresh keeping in mind the main documents i.e. of 17th December, 1968 and decide the same afresh. It is clarified that the Appellate Court shall hear and decide the matters without being influenced by the earlier order which is quashed in the present petition and also the present order passed in the present petition. It is further directed that till the appeal is heard, both the sides shall maintain status quo.

8. Rule is made absolute to the aforesaid extent with no order as to costs.

[K.S. JHAVERI, J.]

/phalguni/